

REMARKS

Claims 1-3 and 5-22 are pending in the application. Support for the newly added claim 22 can be found throughout the specification. No new matter has been added to the application.

Rejection Under 35 U.S.C. § 103(a) over Myllymaki (U.S. Patent No. 5,670,944)

Claims 1, 3 and 4 have been rejected under 35 U.S.C. § 103(a) as being “obvious” over Myllymaki. Applicant traverses this rejection. Reconsideration and withdrawal thereof are respectfully requested.

Myllymaki discloses a monitoring device for physical and/or performance condition. A plurality of different transducers are used to monitor health or physical condition of an individual to obtain data regarding the overall health and performance level of the individual (Col. 3, lines 3-31).

Myllymaki fails to disclose or suggest measuring skin temperature sensor connected to a microprocessor for mathematically converting the sensed temperature to obtain corrected skin temperature. Myllymaki fails to disclose or suggest mathematically converting the sensed temperature to corrected skin temperature.

A significant feature of the presently claimed invention is that the obtained skin temperature is mathematically converted to a corrected skin temperature. The instant specification at page 5 defines “corrected skin temperature” as follows: “the temperature of a baby’s skin as corrected by processing the measured skin temperature through a correction table, which takes into consideration various environmental factors and age of the baby.” Notwithstanding the calculation of the corrected temperature of specifically a baby, Myllymaki

does not recognize the necessity or the desirability of obtaining a corrected temperature. Since obtaining the corrected temperature of the baby (or the corrected temperature of anyone at all) is a significant feature of the claimed invention, which Myllymaki fails to contemplate, the presently claimed invention is not obvious over the Myllymaki reference.

In the Office action of June 6, 2007 at page 9, the Examiner theorizes, “Clearly, the skin temperature detected in the Myllymaki reference is compensated to provide the corrected skin temperature as suggested by the reference.” In particular, the Examiner points to column 3, first full paragraph for the basis of her conclusions.

The Examiner has failed to establish *prima facie* obviousness of the claimed invention over the cited reference. Rather, the Examiner has mischaracterized the teachings of the Myllymaki reference. Applicant has carefully reviewed the cited passage, as well as the entire document, but finds no basis for the conclusion reached by the Examiner. There is no mention in the entire document of any disclosure or suggestion to convert the obtained skin surface temperature into any “corrected” temperature. The reference provides neither the suggestion nor the motivation to create any sort of algorithm to provide a corrected skin temperature. Optionally, the Myllymaki reference fails to disclose or suggest displaying the corrected temperature on a display (claim 22).

Having discussed above the lack of suggestion or motivation found in the Myllymaki reference for correcting the skin surface temperature to the corrected skin temperature, the Examiner’s attention is directed to the context and teaching of the Myllymaki reference.

The Myllymaki reference discloses a body monitoring device fitted with various transducers that sense skin surface temperature, heart beat rate, motor activity and so forth to

provide an accounting of the physical status of the individual that is being measured. A temperature transducer 5 is mentioned in columns 2 and 3. Column 3, lines 7-8 discusses using “a plurality of different transducer signals to compensate for false data caused by an individual transducer”. Note that “false data” used herein refers to the undesirability of relying on one particular parameter to determine the wearer’s physical condition, such as heart beat rate alone. Rather, other physical data, such as motion, skin surface temperature, when taken together, provide more reliable information to the individual. However, moving beyond this disclosure, the Examiner alleges that “the skin temperature detected in the Myllymaki reference is compensated to provide the corrected skin temperature as suggested by the reference” (Page 9, Office action). There is simply no disclosure, not even a mention, contemplation or motivation found in the Myllymaki to suggest mathematically converting the raw skin surface data to obtain a corrected skin temperature.

The Examiner has used hindsight reconstruction to arrive at the presently claimed invention. Without the benefit of Applicant’s disclosure of the desirability of obtaining a corrected skin temperature, which is useful to have in particular for babies as they are more sensitive to environmental factors than adults, the Myllymaki device would have been simply understood as incorporating a variety of sensors for obtaining skin surface temperature and others. It is simply a misreading of the Myllymaki reference to suggest that this reference discloses mathematically manipulating measured skin surface temperature to obtain corrected skin temperature.

Therefore, the presently claimed invention is patentable over the cited reference.

Rejection Under 35 U.S.C. § 103(a) over Myllymaki (U.S. Patent No. 5,670,944) in view of Teller (U.S. Patent Application Publication No. 2002/0013538)

Claims 2, 5-7, and 11-21 have been rejected under 35 U.S.C. § 103(a) as being “obvious” over Myllymaki and Teller. Applicant traverses this rejection. Reconsideration and withdrawal thereof are respectfully requested.

Myllymaki is discussed above.

Teller describes a method for monitoring health signs in which a sensor unit contacts the subject and the display is separated from the sensor unit. Further, the Teller reference fails to disclose or suggest mathematically converting sensed skin temperature to corrected skin temperature.

Applicant notes that claims 2, 5-7, and 11-21 ultimately depend from claim 1. Therefore, a significant feature of the presently claimed invention as embodied in claims 2, 5-7, and 11-21 is that the obtained skin temperature is mathematically converted to a corrected skin temperature. However, since neither Myllymaki nor Teller recognizes the necessity or the desirability of obtaining a corrected temperature of anyone at all, and since obtaining the corrected temperature of the body is a significant feature of the claimed invention, the presently claimed invention is not obvious over the Myllymaki and Teller references.

Rejection Under 35 U.S.C. § 103(a) over Teller (U.S. Patent Application Publication No. 2002/0013538)

Claims 8-10 have been rejected under 35 U.S.C. § 103(a) as being “obvious” over Teller. Applicant traverses this rejection. Reconsideration and withdrawal thereof are respectfully requested.

Applicant notes that claims 8-10 ultimately depend from claim 1. Therefore, a significant feature of the presently claimed invention as embodied in claims 8-10 is that the obtained skin temperature is mathematically converted to a corrected skin temperature. However, since Teller fails to recognize the necessity or the desirability of obtaining a corrected temperature of any body, and since obtaining the corrected temperature of the body is a significant feature of the claimed invention, the presently claimed invention is not obvious over the Teller reference.

Conclusion

It is believed that the application is now in condition for allowance. Applicants request the Examiner to issue a notice of Allowance in due course. The Examiner is encouraged to contact the undersigned to further the prosecution of the present invention.

The Commissioner is authorized to charge JHK Law’s Deposit Account No. **502486** for any fees required under 37 CFR § 1.16 and 1.17 and to credit any overpayment to said Deposit Account No. **502486**.

Respectfully submitted,

JHK Law

Dated: June 6, 2008

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